

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WESTCHASE CORPORATE CENTER
HOLDINGS, LLC.
Plaintiff,

vs.

TRICON GEOPHYSICS, INC.
Defendant.

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CIVIL ACTION NO. 4:20-CV-02899

PLAINTIFF’S SECOND AMENDED COMPLAINT AND SUIT ON SWORN ACCOUNT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Westchase Corporate Center Holdings, LLC (“Plaintiff” or “Westchase”) files this Second Amended Complaint against Tricon Geophysics, Inc. (“Defendant” or “Tricon”), and shows the following:

I. PARTIES

1.1. Plaintiff, *Westchase Corporate Center Holdings, LLC.*, is a Delaware limited liability company with its principal place of business in Massachusetts. Westchase’s manager, AEW Capital Management, L.P., is a Delaware limited partnership with its principal place of business in Massachusetts. AEW Capital Management, L.P.’s general partner is AEW Capital Management, Inc. AEW Capital Management, Inc. is a corporation formed under the laws of Massachusetts with its principal place of business in Massachusetts. Westchase is licensed to conduct business in Texas.

1.2. Defendant, *Tricon Geophysics, Inc.*, is a foreign for-profit corporation formed under the laws of the State of Colorado whose principal place of business is in Colorado. Tricon Geophysics, Inc. has been served with process.

II. JURISDICTION AND VENUE

2.1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. Tricon and Westchase are completely diverse, and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

2.2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) as a substantial part of the claims giving rise to this suit occurred in this District.

2.3. Tricon is subject to personal jurisdiction in this District. Tricon conducts business in Texas, and this dispute arises out of a contract negotiated in Texas, performable in Texas, and concerning property located in Houston, Texas.

III. STATEMENT OF FACTS

3.1. On December 5, 2000, Westchase Development Venture, L.P., Westchase's predecessor in interest, and Tricon entered into a Lease Agreement ("Lease") providing for the lease of certain real estate and improvements located at 1011 Richmond Avenue, Houston, Texas 77042, Suite 230 (the "Premises"). The Lease is attached as Exhibit A to Westchase's Original Complaint. [Doc 1].

3.2 Plaintiff is the successor in interest to Westchase Development Venture, L.P.'s interest in the Premises and Lease and Westchase assumed all of Westchase Development Venture, L.P.'s rights and responsibilities under the Lease. A copy of the amendments to the Lease (collectively, the "Lease Amendments") are attached to Westchase's Original Complaint as Exhibit B. [Doc. 1] (The Lease and Lease Amendments, together, the "Lease Documents").

3.4 Under the terms of the Lease Documents, Tricon is in default for failing to make rental payments when due. On March 13, 2020, Plaintiff demanded immediate payment from

Tricon under the terms of the Lease Documents. See Exhibit C to Westchase's Original Complaint. [Doc. 1]. Despite demand, Defendant has not paid Plaintiff pursuant to the Lease Documents.

3.5 As of the date of this filing, the amount of delinquent rent and other charges due and owed under the Lease Documents is \$556,426.17. A true and correct copy of a Statement of Account reflecting the invoices, the goods provided, and the amounts owed by Tricon, is attached as Exhibit 1 to Westchase's Second Amended Complaint ("Statement of Account"). To date, despite repeated demands for payment by Westchase, Tricon has failed to pay the rent owed under the Lease Documents.

IV. CAUSES OF ACTION

Count 1 - Breach of Contract

4.1. Westchase incorporates the facts stated above.

4.2 The Lease provides that Westchase would provide the Premises to Tricon in exchange for a monthly rental fee. Westchase performed its contractual obligations under the Lease. Tricon has not performed its contractual obligations as it has refused, and continues to refuse, to pay Westchase the rent owed, and Westchase has suffered damages as a result.

4.3. All conditions precedent to Westchase's recovery under the Lease have occurred or have been performed.

Westchase incurred damages within the jurisdictional limits of this court.

V. ATTORNEY FEES

5.1. Westchase presented the above-mentioned account to Tricon in writing, demanding payment prior to filing this lawsuit. See Exhibit C to Westchase's Original Complaint. However, Tricon has failed and refused to pay the account. Westchase has employed the undersigned attorneys to represent Westchase in this matter. Accordingly, Westchase requests that under Texas

Civil Practices and Remedies Code, Chapter 38 and under the Lease Documents, Westchase be awarded reasonable attorneys' fees, expenses, and court costs for Westchase's attorneys' work before the district court, any appellate court, and the Texas Supreme Court.

PRAYER

Plaintiff, Westchase Corporate Center Holdings, LLC, requests that Defendant, Tricon Geophysics, Inc. be cited to appear and answer; that upon final hearing, Plaintiff, Westchase Corporate Center Holdings, LLC, have judgment against Defendant, for actual damages of \$556,426.17, plus interest before and after judgment as provided by law, court costs, reasonable attorneys' fees and expenses, and such other and further relief to which Plaintiff is justly entitled.

Respectfully submitted,

JACKSON WALKER LLP

/s/ **Richard A. Howell**

RICHARD A. HOWELL

State Bar No. 24056674

SD Bar No. 959050

rahowell@jw.com

HARRIS J. HUGUENARD

Texas Bar No. 24099615

SD Bar No. 3007223

hhuguenard@jw.com

1401 McKinney Street, Suite 1900

Houston, Texas 77010

Tel.: 713-752-4531

Fax: 713-754-6722

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on November 19, 2020, I caused a copy of the foregoing pleading to be served upon counsel of record for all parties vial the Court's ECF system.

/s/ Richard A. Howell_____
Richard A. Howell

CERTIFICATE OF CONFERENCE

I certify that on November 19, 2020, counsel for Defendant provided his non-opposition to the filing of this Second Amended Complaint in accordance with Fed. R. Civ. P. 15(a)(2).

/s/ Harris J. Huguenard_____
Harris J. Huguenard